

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition
of Spence Express, Inc. for
Contract Carrier Permit
Authority to Serve American
Agco for the Transportation
of General Commodities

FINDINGS OF FACT,
CONCLUSIONS AND ,
RECOMMENDED ORDER

The above-entitled matter came on for hearing before Allan W. Klein,
Administrative Law Judge, on November 16, 1992, in South St. Paul.

Appearing on behalf of the Petitioner, Spence Express, Inc., was James
B. Hovland, of the firm of Krause & Rollins, 310 Groveland Avenue, Minneapolis,
Minnesota 55403.

Appearing on behalf of Protestant Jack Neumann Trucking was Jack C.
Neumann, R.R. 1, Box 281, Altura, Minnesota 55910.

Appearing on behalf of Protestant Zabel Trucking was Thomas Zabel,
R.R. 1, Box 118, Plainview, Minnesota 55964.

The hearing concluded in less than a day. However, the record did not
close until December 16, upon receipt of a modified amendment from
Petitioner's attorney.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the
Rules of Practice of the Transportation Regulation Board, and the Rules of
the
Office of Administrative Hearings, exceptions to this Report, if any, by any
party adversely affected must be filed within 20 days of the mailing date
hereof with the Transportation Regulation Board, Minnesota Administrative
Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St.
Paul, Minnesota 55075. Exceptions must be specific and stated and numbered
separately. Proposed Findings of Fact, Conclusions and Order should be
included, and copies thereof shall be served upon all parties. If desired,
a
reply to exceptions may be filed and served within ten days after the service
of the exceptions to which reply is made. Oral argument before a majority
of
the Board may be permitted to all parties adversely affected by the
Administrative Law Judge's recommendation who request such argument. Such
request must accompany the filed exceptions or reply, and an original and
five
copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUES

1. Whether the service which Petitioner proposes to provide is contract carrier service, or irregular route common carrier service?
2. Whether Petitioner has demonstrated fitness and ability to operate the proposed service?
3. Whether Petitioner's vehicles meet the safety standards established by the Department?
4. Whether the area to be served has a need for the transportation services required in the Petition?
5. Whether existing permit and certificated carriers in the area to be served have demonstrated that they offer sufficient transportation services to meet fully and adequately those needs?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Background of American Agco and Its Current Transportation Needs

1. American Agco is a large manufacturer and wholesaler of farm-related products, both hardware products (such as fences, birdfeeders, and cattle oilers) and feed products (such as feed, pharmaceuticals, pet foods, and fertilizers). It maintains a warehouse space in excess of 70,000 square feet, which contains 3,000 tons of bagged, and 900 tons of bulk, products. It blends feeds to customers' specifications.
2. Currently, the company employs approximately 110 people, and annual sales are in the range of \$55-60 million. It sells to approximately 850 dealers in a three-state area, but approximately 75% of its sales are within the State of Minnesota.
3. The company's principal facility is located in South St. Paul. Historically (from 1936 to the early 1980s), outbound shipments from South St. Paul were handled by livestock truckers (and railroads) as backhauls from

livestock hauling to South St. Paul. The record does not indicate how inbound shipments to South St. Paul were handled during that period. Prior to the 1980s, American Agco's dealers were willing to carry more Inventory than they

are today, and thus delivery times for products from South St. Paul were not as important as they are now.

4. In the early 1980s, American Agco began to focus its outbound shipments onto one particular carrier, Stagecoach Express. Stagecoach Express had started serving American Agco in 1978, with only one or two trucks per week. During the 1980s, however, American Agco began to direct more and more of its outbound shipments onto Stagecoach Express to the point where, in 1992 during the week before the hearing, Stagecoach had six tractors and 13 trailers in use for American Agco products. American Agco requires between three and seven rigs daily, Stagecoach does a variety of other work for other customers, and has over 30 tractors and trailers in operation, including air ride flatbeds, air ride vans, and furniture vans.

5. The primary reason that American Agco began using Stagecoach more and more during the 1980s was because Stagecoach was willing to meet American Agco's particular needs. During the mid-1980s, there was a severe downturn in the agricultural sector, and dealers of agricultural products would no longer carry the inventories that they had in prior decades. The "just in time" mode which had begun in the industrial sector became a popular mode in the agricultural sector as well. Dealers would order product for delivery on a day certain and American Agco guaranteed that product would be delivered on that day. In some cases, it has gotten to the point where the dealer's customer will have a truck waiting at the dealer to receive the product coming from American Agco. This put a premium on predictable delivery. Stagecoach has been able to meet that need.

6. Another reason for focusing outbound traffic onto Stagecoach was that American Agco received complaints from some of its dealers regarding livestock haulers. Some dealers believed (rightly or wrongly) that there was a "stigma" attached to livestock haulers, and that their trailers were unfit for making feed deliveries. Some dealers complained that some of their deliveries arrived wet, which they attributed to the livestock hauler not drying out his truck after he had cleaned it out following a livestock run. These complaints, when added to American Agco's growing need for predictable and dependable service, caused American Agco to direct more and more of its outbound freight away from livestock haulers to Stagecoach during the mid 1980s.

7. American Agco also found that it could achieve economies of scale by using one truck to make a number of deliveries and pickups. It would schedule more than one commodity to be delivered from the same truck, and would schedule numerous stops for the truck. There might be 13 different stops in one outbound trip, for example. In addition, American Agco discovered that further economies were possible when the truck could be used not only for delivering outbound product from South St. Paul, but also backhauling inbound product from outlying locations into the South St. Paul facility.

8. Inbound shipments to South St. Paul include such products as salt from Duluth, dogfood from Perham, and grit from New Ulm.

9. American Agco developed the habit or practice of attempting to minimize its transportation costs by attempting to arrange for the pickup of a product from a supplier and the drop-off of that product to a dealer without

the product ever coming into South St. Paul at all. While this was, and continues to be, a rare occurrence, it is possible on occasion, and American Agco would like to maximize its ability to do this.

10. By 1991, American Agco and Stagecoach had developed a relationship whereby Stagecoach dedicated up to ten trailers and up to five drivers to American Agco. The trailers were painted with American Agco's colors and logo, and were spotted at American Agco's facility. There were ten dedicated trailers, and between three and five tractors. The drivers were given keys to American Agco's staging area, and became familiar with the needs of some of American Agco's larger customers. A regular schedule was established, whereby the same towns were served on the same day of the week on Monday, Tuesday, Wednesday and Thursday. In addition, the same drivers generally drove to the same territories for American Agco.

11. Stagecoach has equipped three of the American Agco-painted vans with specially designed racks. American Agco discovered that when it attempted to place steel fence gates, for example, into a van that also contained bags of feed, it was not unusual for the bags to be damaged by the gates. Mixing hardware and bagged products on the same van was economical, but the damage was frustrating. American Agco and Stagecoach jointly designed a rack, which was placed underneath the bottom of the van, to carry fence gates and similar hardware products. This eliminated the problem of punctured bags, and also increased the total capacity of the van. The rack can be seen on Exhibit 2.

12. In order to gain a competitive advantage, American Agco has attempted to orient its entire operation toward maximizing service to its customers. In addition to guaranteeing delivery dates, American Agco has directed Stagecoach's drivers to assist in unloading deliveries, even if that means carrying 5,000 pounds of bagged feed into a store or stocking it in a warehouse. If there are "returns" to be carried from the customer back to American Agco, the drivers are expected to assist in loading them as well. The drivers are expected to help customers with paperwork and make C.O.D. deliveries. American Agco's customers have come to expect these services, and complain when they are not provided. Complaints have been made when Stagecoach has had to substitute one of its regular over-the-road drivers for one of the American Agco drivers, as the substitutes have not helped unload.

13. American Agco wants almost total control over the dispatching and routing of its trucks. There are two underlying purposes: One is to minimize cost by maximizing efficiency. The second is to maximize customer satisfaction. American Agco wants a full truck out and a full truck back. It wants to serve its customers reliably and when needed, but it wants to use as few trucks and drivers as possible. It is willing to use common carriers when that is the cheapest way to get a delivery or pickup for the small or occasional load, but it wants dedicated equipment and drivers for the bulk of its work because American Agco wants to control its own transportation. It does not want to relinquish that control to a common carrier, and wants either

Statecoach, or Spence, or private carriage.

Reasons for Change from Stagecoach to Spence

14. Stagecoach operates 30 rigs, primarily in interstate commerce. It has air ride flatbeds, air ride vans, and furniture trailers in addition to the equipment dedicated to American Agco. The owners of Stagecoach, the Ries family, are not only involved at Stagecoach, but also are involved in farming 800 acres and the operation of two grain elevators. Prior to January 1 of 1992, Gary Reis, the president of Stagecoach, was able to spend the vast majority of his time on Stagecoach. However, in January, his father became ill, and Gary Reis was required to manage all three businesses. He discovered that he was unable to properly do that. In reviewing the situation, he noted the growing demands of American Agco and the difficulty he was having in substituting other drivers onto American Agco routes. Stagecoach's American Agco drivers were used to doing significant amounts of "extra services" for American Agco clients, and Reis' regular over-the-road truckers were unwilling to do so. Customers complained to American Agco, and American Agco, in turn, complained to Stagecoach. Reis decided the American Agco account was simply more work than it was worth, and he decided to get rid of it. He wanted to simplify his Stagecoach business so he would have more time for his farm and elevators. He felt a moral obligation to American Agco to assist them in finding a replacement, and thus sought out Steve Spence.

Spence Express and the Proposed Operation

15. Steven T. Spence worked for 19 years with Dahlen Transport. He served in a wide range of positions, including driver, terminal manager, regional manager, operations manager, and vice-president and director of the company. He left Dahlen at the end of 1991, in order to form his own business.

16. In March 1992, Steven Spence formed Spence Express, Inc. He obtained ICC authority, MC-252665. In April of 1992, he applied for Minnesota contract carrier permit authority to serve American Agco.

17. Spence Express currently owns one tractor/trailer combination, which is leased to Stagecoach. Spence himself has been operating that rig since

approximately March in order to learn the business of American Agco prior to taking over the operation from Stagecoach. Spence and Stagecoach have agreed that if this authority is granted, Spence will purchase ten trailers from Stagecoach. These are the ten trailers which are currently dedicated to American Agco work, and are the ones which are painted with company colors and bear the American Agco logo on the side. Spence has adequate cash from Steven Spence's personal funds to make this acquisition.

18. In addition to the one power unit already owned, Spence intends to add two more owner/operators and two employee drivers. These personnel are currently driving for Stagecoach, serving American Agco.

19. Spence will conduct operations from a terminal in Hastings. There will be one office person, who will be Steven's wife, Virginia Spence. Virginia Spence is presently the safety director at Dahlen Transport, Inc., and has been involved in various aspects of the transportation business for five years. This past experience should assist Spence Express in operating safely. Spence has taken aspects of Dahlen's safety program, for example, and incorporated it into its proposed plan of operation. Ex. 3, pp. 5-7.

20. Spence intends to operate the American Agco account in the same manner that Stagecoach did, with two exceptions. First, the Spence drivers will be uniformed, wearing American Agco uniforms. The Stagecoach drivers did not wear uniforms. Secondly, Spence will not be able to fill all of American Agco's needs at first. Some of those will have to be filled by Stagecoach, while others will continue to be filled by common carriers.

21. Steven Spence has the financial ability to conduct the proposed operation.

22. American Agco currently does use common carriers, including livestock haulers, for a small portion of its business. Common carriers are used if one Stagecoach truck cannot handle all of the product that needs to be delivered on a given day but there is not enough to make two Stagecoach trucks economical. Common carriers are also used when a delivery cannot wait for the Stagecoach truck to make its scheduled run to a particular area of the state. Both American Agco and Spence believe that even if this petition is granted, common carriers will continue to be used to the same extent as they are currently being used. The economics and customer demands that favor the use of common carriers now will be the same after this petition is granted.

23. American Agco will give Spence drivers keys to its facility, and will otherwise treat Spence the same way it treats Stagecoach now.

24. American Agco's use of dedicated equipment is expected to increase at the same rate as it has in the past few years -- adding one more truckload per week approximately every six months. During 1991-92, however, there was a substantial increase in the volume of Stagecoach shipments for American Agco, beginning at one to three trucks daily, growing to three to seven trucks daily. This growth was one of the reasons that Gary Reis finally decided to get rid of the American Agco account.

25. Stagecoach sees itself as a "backup" to Spence. Stagecoach will be called upon to handle some of the American Agco business which Spence will not be able to handle, at least in the beginning. Stagecoach may haul salt, or make city deliveries, or handle overflow. Spence acknowledges that the American Agco account really needs eight trucks, rather than just five, and that until Spence can provide all of the service itself, Stagecoach will have to provide some of it.

26. As part of the negotiations which resulted in the withdrawal of the Protest of Hyman Freightways, Spence initially agreed to restrict its inbound shipments to South St. Paul to full truckload movements only. Under the initial proposal, Spence would not carry less than truckload movements into South St. Paul. This would have prevented Spence from doing what Stagecoach had been doing -- picking up a load of dogfood in Perham, for example, dropping half the load in St. Cloud, and returning to South St. Paul with the other half. After the hearing, when it became apparent how this restriction would function, Spence altered it so that Spence could carry certain inbound commodities into South St. Paul, even if it was only a partial load. The proposed restriction now limits inbound shipments to feed, feed ingredients, pet food, bird food and returned merchandise.

27. There is no due process problem posed by the post-hearing change in the restriction. The initial restriction would have allowed Spence to haul any products into South St. Paul for the account of American Agco, so long as it was a full truckload. The new restriction eliminates all hauling into South St. Paul, except for five specified commodities. For those five, the hauling may be either full truckload or less than truckload. There was no restriction at all in the original Petition as noticed by the Board, so the only people who could complain about the change are those who protested initially. There is no testimony to suggest that any of the Protestants were counting on being able to haul LTL inbound to South St. Paul.

Protestants

28. Jack Neumann Trucking, based in Altura, holds IRCC Permit No. 59568 (or 59569 -- there is some confusion in the record). This authority permits him to transport general commodities, excluding household goods and commodities in bulk, between the seven-county metropolitan area and Winona County. Neumann uses this authority to transport livestock to the Twin Cities. He is very interested in obtaining return freight for the backhaul.

29. American Agco used to do significant business with Neumann. Ex. 7 identifies 24 accounts in the Winona/Lewiston/St. Charles area which Neumann used to serve for American Agco. But in the past six months, Neumann has only hauled between 25 and 40 loads, all of which were less than truckload.

30. Neumann does not have a traditional 48 foot van. Instead, he has a cattle box with vents, but the vents can be closed to create a van-like vehicle. Neumann is not willing to paint a trailer with the American Agco colors, or to put its logo on, or to wear American Agco uniforms. He does not have specialized racks. More importantly, he did discuss guaranteed delivery on a daily basis with American Agco, but Neumann could not provide it.

31. Zabel Trucking is located in Plainview. It holds IRCC Permit No. 56689. It has statewide general commodities authority, but limits its LTL work to points in southeastern Minnesota and western Wisconsin, generally bounded by I-35W on the west and I-94 on the north. It would be willing to take full truckload lots anywhere in the state, even beyond its normal service area.

32. Zabel has seven vans of the 48-foot type, as well as grain trailers and dump trailers. Zabel's largest customer, Lakeside Packing, uses three

vans per day and so four are available for LTL work. Fifty percent of Zabel's total business comes from Lakeside Packing while 10% comes from grain hauling. The remaining 40% is split up among livestock hauling, LTL work, dump work and anhydrous ammonia.

33. Zabel is in St. Paul daily, with one or two trucks, and believes it could handle American Agco's business in the geographic area where it currently serves. At the present time, Zabel has only occasional business from American Agco. It has been almost a year since American Agco has called, although Zabel does get there more often because two of its customers specify Zabel as their hauler from American Agco. Prior to 1985, however, Zabel had substantial business from American Agco. Now, it only gets small orders that won't fit on the Stagecoach truck or small odd loads.

34. Zabel does not have any racks. Thomas Zabel claims to be willing to "do whatever it takes" to get the American Agco business -- he claims he would be willing to wear uniform, paint his trailers, and do whatever else American Agco wanted. These claims, however, are not convincing in light of Zabel's current operation. For example, there has been no showing that Zabel's drivers would be willing to unload substantial loads of product for a customer, or that it could maintain the rigorous delivery and pickup schedule which American desires.

35. American Agco maximizes its efficiency (and minimizes its costs) by moving Stagecoach's trucks around to meet the varying demands of the day, both for pickups and deliveries. Even if Zabel could meet American Agco's specialized needs, carving out a piece of territory for Zabel but allowing Spence to handle the rest of the state, would limit American Agco's flexibility to dispatch both the Zabel and Spence trucks in the most efficient manner.

Procedural History

36. The Petition in this matter was filed with the Department of Transportation on April 17, 1992. Along with the Petition was a list of the equipment which Spence proposed to acquire from Stagecoach and a contract between American Agco and Spence. Also attached was a statement of specialized service needs prepared by American Agco.

37. The Petition was forwarded to the Board on April 20. Notice was published in the Board's weekly calendar on April 24, with a protest date of May 14.

38. Timely protests were filed by Dahlen Transport, Inc.; Hyman Freightways, Inc.; Zabel Trucking; and Jack Neumann Trucking. The Dahlen protest was later withdrawn. The Hyman protest was also withdrawn, subject, at first, to the acceptance of an amendment to restrict the inbound transportation to South St. Paul against less than truckload traffic. Following the hearing, Hyman agreed to a revised amendment that would prohibit Spence from carrying anything into South St. Paul except for five specified commodities.

39. On May 18, 1992, Spence was notified that a hearing would be required and that it should attempt to settle the matter by amendment or otherwise. Settlement was not possible and so, on July 31, the Board began the process of scheduling a prehearing conference. The prehearing conference was ultimately set for September 3. It was unsuccessful in resolving the matter, and so on October 9 the case was set for hearing. Notice of the hearing was published in the Board's weekly calendar on that date, and weekly thereafter.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. From petitioner's experience, knowledge of the regulations and financial condition, the Judge concludes that he is fit and able within the meaning of Minn. Rule 7800.0100, Subp. 4.

4. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.

5. Petitioner's proposed service does constitute a specialized service within the meaning of Minn. Stat. 221.011, subd. 12 (1990).

6. American Agco has demonstrated a need for the transportation services requested in the Petition, within the meaning of Minn. Stat. 221.121, subd. 1 (1990).

7. Existing permit and certificated carriers have failed to demonstrate that they offer sufficient transportation services to meet fully and adequately the need demonstrated by American Agco.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

IT IS THE RECOMMENDATION to the Board that it enter the following:

ORDER

That the Petition of Spence Express, Inc. for contract carrier permit authority to serve American Agco, 545 Hardman Avenue, South St. Paul, Minnesota 55075, for the transportation of general commodities be GRANTED; but inbound movements to the facilities of American Agco in South St. Paul are restricted to the transportation of feed, feed ingredients, pet food, bird food and returned merchandise only.

Dated this 30th day of December, 1992.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat., 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded; two tapes.

MEMORANDUM

There are only two significant questions posed by this case. The first is whether or not the proposed plan qualifies for contract permit authority. The second is whether or not Zabel Trucking, one of the Protestants, has demonstrated that it could handle a portion of American Agco's needs in Zabel's traditional geographic area.

Specialized Service

What "specialized service" does American Agco require in order to meet its transportation needs? Put more bluntly, has American Agco demonstrated that it needs anything other than what it can obtain from a common carrier?

American Agco has 850 dealers scattered throughout the state. It is a relatively large volume shipper. It would appear to be an attractive account for any substantial trucking firm, particularly those firm; with broad geographic authority. However, few of them protested and the two which have the most substantial equipment and authority, Hyman and Dahlen, have both withdrawn their protests.

In order to retain its existing customers and add new ones, American Agco has decided to emphasize customer service in a variety of ways, including its transportation services. It has decided that its drivers will unload its trucks, even if that means the driver must carry several thousand pounds of bagged feed into a facility. Stagecoach's regular over-the-road drivers are not used to doing this, and when they are pressed into service on American Agco runs, they generate complaints from customers. Indeed, one of the reasons Stagecoach wants to shed the American Agco account is that it finds it too hard to handle -- too demanding -- and not as profitable as traditional over-the-road hauling.

Stagecoach has installed special racks on three of its vans which are designed to cut back on the damage to bagged feed which had been occurring from hardware products. However, these racks have not been installed on all of the vans, nor has Spence committed to install them on all of the remaining vans .

There are few reported Minnesota cases to assist in determining how much specialization is required to constitute a bona fide "specialized service". In American Courier Corp. v. Loomis Armored Car, Inc., 200 N.W.2d 175 (1972), Protestant American Courier served 200 banks in Minnesota, while Petitioner Loomis served eight. There were 451 potential shippers. The remaining financial institutions used mail, bus and air to transport their goods.

Loomis filed a petition seeking contract authority to serve 21 additional specified financial institutions. The Commission granted Loomis authority to serve 18 of the 21. It found that the area to be served [Minnesota] did not have a sufficient number of carriers to fully and adequately meet the needs, and that some of the institutions desiring the specialized transportation service had not been able to secure it. While that was the central holding of the case, the court also discussed the particular problems raised by "cash letters" and "demand deposit accounting" materials. The court noted that any loss of time in collecting deposits causes a bank to lose the interest or "float" on the deposits, and that exacting scheduling requirements were necessary for avoiding these losses. The Commission (and the courts) found that Protestant American Courier was unable to provide the route flexibility deemed essential for a successful operation, and that adding another carrier would alleviate the scheduling inadequacies of a single courier. From this, we can conclude that route flexibility and adequate scheduling are factors which can be "specialized needs" in a particular fact situation.

In *Appeal of Signal Delivery Service, Inc.*, 288 N.W.2d 707 (1980), Signal sought a contract permit to serve Whirlpool Corporation to and from St. Paul and Cottage Grove and all Minnesota points. Signal was, at the time, the largest contract carrier in the United States, despite the fact that it only served three accounts -- Whirlpool, Sears and Jones & Laughlin Steel. Whirlpool desired its carrier to be integrally connected with its operations and communications network, to dedicate equipment solely to Whirlpool, and to respond to Whirlpool's needs before all others. Whirlpool believed that this would save it substantial monies in annual inventory expense and warehousing expense. It believed that it could make its transportation system cheaper and more efficient if Signal were its carrier in Minnesota. None of the protesting carriers could integrate fully into Whirlpool's communication system, and some were unwilling to even try. The Supreme Court adopted the district court's conclusion that no single existing carrier could adequately fulfill Whirlpool's specialized needs, and ordered that the permit be granted. At the end of its opinion, the Supreme Court went out of its way to note that it appeared that the Commission's denial of the Petition had the effect of improperly protecting existing carriers contrary to the purpose of the statute, and that the court had previously held that "contract carriers should not be prevented from satisfying the changing transportation requirements of basic industries, especially where the distinct needs of a shipper may be better served by the new service than by the existing carriers." Finally, the court noted that since very little of Whirlpool's business was currently being provided by Protestants, they would not be substantially harmed if Signal were issued a permit.

Does American Agco's demonstrated need for driver-assisted delivery and control over routes and schedules rise to the level of "specialized service"? The Administrative Law Judge concludes that it does, based upon the logic of the two cited cases.

American Agco did not provide any breakdown of its hauling to demonstrate how much was being done by Stagecoach, and how much was being done by common carriers. It appears from the testimony, however, that the vast majority of

American Agco's shipping is being done by Stagecoach, and would be done by Spence if this Petition is granted. American Agco's president stated, both

orally and in writing, that none of the occasionally utilized common carrier services would be reduced by the Petition, and that the Petition was solely to substitute Spence for Stagecoach. The only reason why it was not handled as a transfer is that Spence does not have enough tractors to totally replace Stagecoach, and so Stagecoach will be doing some work as a "backup" for Spence. Therefore, as in Signal Delivery, supra, the grant of this permit will not substantially diminish the traffic now enjoyed by Protestants,

Has Zabel Demonstrated It Can Fully Meet Petitioner's Needs?

Zabel could not replace Stagecoach and handle all of Petitioner's statewide needs. Zabel argued, however, that it could handle Petitioner's needs within Zabel's traditional service area, which is SOLtheastern Minnesota. The Administrative Law Judge is not convinced, however, that Zabel could do so. Once there has been a showing of need by a petitioner, the burden then shifts to a Protestant to show that existing carriers can meet the need. A Protestant cannot satisfy this burden by generalized assertions such as "I can do all that". Instead, there must be a more convincing demonstration of willingness and ability. In order to "carve out" a territory for Zabel, the Administrative Law Judge would have to be reasonably certain that Zabel could, in fact, perform the services which American Agco did show that it needed. From the record that was made during the hearing, the Administrative Law Judge is not satisfied that Zabel could meet American Agco's needs. American Agco has demonstrated that it needs more than the typical delivery service. Zabel has not demonstrated that it was willing to provide this higher level of service.

A.W.K.